

LYONS & FLOOD, LLP  
65 West 36<sup>th</sup> Street, 7<sup>th</sup> Floor  
New York, New York 10018  
(212) 594-2400

Attorneys for Defendant  
COMPANIA CHILENA de NAVEGACION  
INTEROCEANICA S.A. d/b/a CCNI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
VIGILANT INSURANCE COMPANY,

**ECF CASE**

Plaintiff,

- against -

07 CV 5910 (NRB)

M/V "CCNI CARTAGENA", her engines,  
tackle, boilers, etc.; CCNI; et al.,

**ANSWER**

Defendant.

-----X

Defendant COMPANIA CHILENA de NAVEGACION INTEROCEANICA S.A.  
d/b/a "CCNI" ("CCNI"), by its attorneys, Lyons & Flood, LLP, for its Answer to  
plaintiff's Complaint, alleges upon information and belief as follows:

1. Admits the claim falls within the Court's admiralty and maritime jurisdiction, but except as so specifically admitted herein, denies the remaining allegations contained in Paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.
3. Admits the allegations contained in Paragraph 3 of the Complaint.
4. Avers that Paragraphs 4 and 5 of the Complaint consist of argument and/or conclusions of law to which neither admission nor denial is required. To the extent that factual allegations are included, defendant denies knowledge or information sufficient to

form a belief as to the truth of the allegations contained in Paragraphs 4 and 5 of the Complaint.

5. Admits that on or about July 8, 2006, that shipments of wine were delivered into the care, custody and control of defendant CCNI who contracted to carry the cargo from San Antonio, Chile to New York, New York in accordance with the terms and conditions contained in certain bills of lading issued by CCNI, but except as so specifically admitted herein, denies the remaining allegations contained in Paragraphs 6 and 7 of the Complaint.

6. Denies the allegations contained in Paragraphs 8 and 9 of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint.

8. Denies plaintiff's prayer for relief.

**FIRST AFFIRMATIVE DEFENSE**

9. The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

10. Plaintiff is not the real party in interest and is not entitled to maintain this action in violation of Rule 17 of the Federal Rules of Civil Procedure.

**THIRD AFFIRMATIVE DEFENSE**

11. The shipments described in plaintiff's Complaint are subject to all the terms, conditions, and exceptions, contained in certain bills of lading or other contracts of carriage then and there issued therefore by which plaintiff, shippers, cargo owners, consignees, and holders of said bills of lading or contracts of carriage agreed to be and are bound. Any mis-delivery, non-delivery, non-conformance, shortage, loss or damage

to the shipments, which defendant expressly denies, was due to causes for which defendant is not liable or responsible by virtue of the provisions of the U.S. Carriage of Goods by Sea Act (“COGSA”), 46 USC 1300 *et seq.* approved April 16, 1936 (and any subsequent amendments thereto), the Harter Act, the provisions of the bills of lading, or other contracts of carriage, and/or the General Maritime Law and/or applicable foreign law and/or charter parties and/or the Hague-Visby Rules and/or fixture agreements and/or booking notes.

**FOURTH AFFIRMATIVE DEFENSE**

12. Due diligence was exercised to make the vessel and her appurtenances seaworthy, and to make all other parts of the vessel in which goods are carried, fit and safe for their reception, carriage, and preservation.

**FIFTH AFFIRMATIVE DEFENSE**

13. If the shipments were damaged, which defendant expressly denies, the damage was caused by or due to insufficiency of packaging or inadequacy of marks of the goods for which defendant is not liable pursuant to § 1304(2)(n) and (o) of COGSA and by the terms of the contracts of carriage.

**SIXTH AFFIRMATIVE DEFENSE**

14. Any damage to the shipments, which is expressly denied, was caused by, due to, or contributed to by inherent defect, quality or vice of the goods for which defendant is not liable pursuant to §1304(2)(m) of COGSA and by the terms of the contracts of carriage.

**SEVENTH AFFIRMATIVE DEFENSE**

15. Plaintiff has failed to mitigate reasonably its alleged damages.

**EIGHTH AFFIRMATIVE DEFENSE**

16. Any damage to the goods, which is expressly denied, was caused by, due to or contributed to by an act or omission of the shipper or its agents or servants or owner of the goods for which defendant is not liable pursuant to § 1304(2)(i) of COGSA and by the terms of the contracts of carriage.

**NINTH AFFIRMATIVE DEFENSE**

17. The maximum liability of defendant, if any, is \$500 per package or per customary freight unit for goods not shipped in packages as agreed in the provisions of the bills of lading or other contracts of carriage and pursuant to the provisions of COGSA, specifically § 1304(5).

**TENTH AFFIRMATIVE DEFENSE**

18. If the shipments were damaged, which is expressly denied, said damage was caused in whole or in part by the contributory negligence of the plaintiff and/or its agents and representatives, including but not limited to, the stevedores and warehousemen at the load port and discharge ports.

**ELEVENTH AFFIRMATIVE DEFENSE**

19. If plaintiff's cargo suffered any loss or damage, which defendant expressly denies, then such loss or damage resulted from a cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, and the carrier is not liable pursuant to § 1304(2)(g) of COGSA.

**TWELFTH AFFIRMATIVE DEFENSE**

20. The shipments described in the Complaint are subject to all the terms, conditions, and exceptions contained in certain charter parties to which plaintiff and the

shippers and consignees agreed to be and are bound. Any shortage, loss or damage to the shipment, which defendant expressly denies, was due to causes for which defendant is not liable or responsible by virtue of the provisions of said charter parties.

**THIRTEENTH AFFIRMATIVE DEFENSE**

21. If plaintiff's cargo suffered any loss or damage, which defendant expressly denies, said loss or damage was caused by a peril, danger or accident of the sea or other navigable waters for which the carrier is not liable pursuant to § 1304(2)(c) of COGSA and the terms of the contracts of carriage.

**FOURTEENTH AFFIRMATIVE DEFENSE**

22. The goods which are the subject of this action are presumed to be in the same condition when delivered to the receiver/consignee as when received by the carrier because plaintiff did not give timely written notice of damage under the provisions of the bills of lading and as required by § 1303(6) of COGSA.

**FIFTEENTH AFFIRMATIVE DEFENSE**

23. If the goods were lost or damaged, which is expressly denied, the loss or damage was caused by the act, neglect, or default of the master, mariner, pilot, or servants of the carrier in the navigation or in the management of the ship, and the carrier is not liable pursuant to § 1304(2)(a) of COGSA and the terms of the contracts of carriage.

WHEREFORE, Defendant prays:

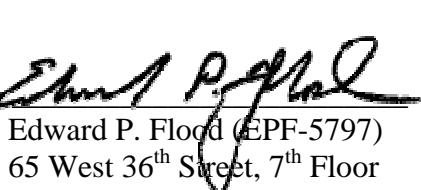
- a. that plaintiff's prayer for relief be denied.
- b. that judgment be entered in favor of defendant against plaintiff, dismissing the Complaint herein together with costs and disbursements of this action;

c. that judgment be entered in favor of defendant for such other and further relief as the Court deems just and proper.

Dated: New York, New York  
August 22, 2007

LYONS & FLOOD, LLP  
Attorneys for Defendant  
COMPANIA CHILENA de  
NAVEGACION INTEROCEANICA S.A.  
d/b/a "CCNI"

By:



Edward P. Flood (EPF-5797)  
65 West 36<sup>th</sup> Street, 7<sup>th</sup> Floor  
New York, New York 10018  
(212) 594-2400

TO: David L. Mazaroli  
Attorney for Plaintiff  
11 Park Place, Suite 1214  
New York, NY 10007  
(212) 267-8480  
File No: 7C-1434

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**CERTIFICATE OF SERVICE**

Erika Tax declares and states that:-

I am not a party to these actions, am over 18 years of age and reside in Queens, New York. I am an employee with Lyons & Flood, LLP, attorneys for defendant COMPANIA CHILENA de NAVEGACION INTEROCEANICA S.A. d/b/a "CCNI" with offices at 65 West 36<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, NY 10018.

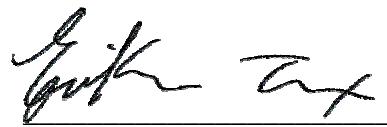
On August 22, 2007, I served true copies of the attached Answer to Complaint upon:-

David L. Mazaroli  
Attorney for Plaintiff  
11 Park Place, Suite 1214  
New York, NY 10007  
(212) 267-8480  
File No: 7C-1434

by depositing same in a sealed and postage prepaid envelope, in a post-office or official depository of the US Postal Service within the State of New York, addressed to the last known address of the addressees as indicated above.

I declare and state under penalty of perjury that the foregoing is true and correct.

Executed on: August 22, 2007



Erika Tax